

TIPPECANOE COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
JUNE 5, 2006

The Tippecanoe County Commissioners met on Monday, June 5, 2006 at 10:00 A.M. in the Tippecanoe Room in the County Office Building. Commissioners present were: President John L. Knochel, Vice President Ruth E. Shedd, and Member KD Benson. Also present were: Auditor Robert A. Plantenga, Commissioners' Assistant Jennifer Weston, County Attorney David W. Luhman, and Secretary Pauline E. Rohr.

President Knochel called the meeting to order and led the Pledge of Allegiance.

APPROVAL OF MINUTES

- Commissioner Shedd moved to approve the Minutes of the May 15, 2006 Regular Meeting as distributed, seconded by Commissioner Benson; motion carried.

APPROVAL OF ACCOUNTS PAYABLE VOUCHERS

- Upon the recommendation of Commissioners' Assistant Jennifer Weston, Commissioner Benson moved to approve the Accounts Payable Vouchers through June 5, 2006 with no exceptions, seconded by Commissioner Shedd; motion carried.

HIGHWAY: Executive Director Opal Kuhl

Open Bids: 2006 Culvert Replacement Project

Attorney Luhman opened and read the bids:

Jack Isom Construction Co., Inc.	Bid Bond	\$1,615,051.43
Milestone Contractors, L.P.	Bid Bond	\$1,609,355.85
Atlas Excavating, Inc.	Bid Bond	\$1,929,717.91

- Upon Attorney Luhman's recommendation, Commissioner Shedd moved to take the bids under advisement, seconded by Commissioner Benson; motion carried.

Bid: Used Tandem Dump Trucks (4) (2005 or Newer) (Opened 5/15/06)

Ms Kuhl recommended rejecting the bid from Wiers International Trucks in the amount of \$96,493/ea for four trucks because they only bid on new trucks. Since they were the only bidder, she concluded used trucks that would meet their specifications are not available at this time.

- Commissioner Shedd moved to reject the bid from Wiers International Trucks, seconded by Commissioner Benson; motion carried.

Street Acceptance: Hickory Hills 3rd SD Ph 1, Sec 3

Irrevocable Letter of Credit #51005529: \$24,961.20: Eagle's Nest, Inc.

<u>Street Name</u>	<u>Length Ft.</u>	<u>Road Width</u>	<u>R/W Width</u>	<u>Surface</u>	<u>Type</u>
Lux Lane	158.60	30'	50'	Asphalt	Curb & Gutter
Casad Drive	1,152.70	30'	50'	Asphalt	Curb & Gutter

Razmic Way	579.16	30'	50'	Asphalt	Curb & Gutter
Double Tree Drive	577.47	30'	50'	Asphalt	Curb & Gutter
Total	2,467.93' = 0.467 Miles		Total Lots: 45 (62-106) & Outlot "A"		

- Commissioner Shedd moved to accept the streets in Hickory Hills 3rd SD Ph 1, Sec 3 and Irrevocable Letter of Credit #51005529 in the amount of \$24,961.20 for Eagle's Nest, Inc., seconded by Commissioner Benson; motion carried.

Maintenance Division Work Hours: 2006 Construction Season

Ms Kuhl requested approval for the Maintenance Division to work a four-day week during the 2006 paving season to promote efficiency and to control overtime. Beginning June 12, 2006, they will work four (4) ten (10) hour days per week, Monday through Thursday, until October 2, 2006. If there is an emergency, the Sheriff's Department will be notified and they will contact the "On-Call" Foreman.

President Knochel asked if the Personnel Policy will have to be amended for the changed work day hours. Attorney Luhman responded that the adoption of a motion for the Highway Department to change their hours of operation will be sufficient.

- Commissioner Shedd moved to approve the change of work hours to four, ten hour work days per week for the Highway Maintenance Department beginning June 12, 2006 and ending October 2, 2006, seconded by Commissioner Benson; motion carried.

Construction Maintenance Bond #104745293: The Hamstra Builders, Inc.

- Commissioner Shedd moved to accept Three (3) year Construction Maintenance Bond #104745293 in the amount of \$5,000 for The Hamstra Builders, Inc. for work on the right-of-way at the corner of Lindberg Rd. and Cushing Dr. for the new Public Library, seconded by Commissioner Benson; motion carried.

Street Acceptance: Shawnee Ridge SD Ph 4

Construction Maintenance Bond #104632498: \$49,164: Milestone Contractors, L.P.

<u>Street Name</u>	<u>Length Ft.</u>	<u>Road Width</u>	<u>R/W Width</u>	<u>Surface</u>	<u>Type</u>
Munsee Drive	2,490.16	30'	50'	Asphalt	Curb & Gutter
Taino Drive	733.99	30'	50'	Asphalt	Curb & Gutter
Callalam Court	414.56	30'	50'	Asphalt	Curb & Gutter
Cascade Court	449.02	30'	50'	Asphalt	Curb & Gutter
Total	4,087.73' = 0.774 Miles		Total Lots: 79 (126-204) & 2 Outlots ("A" & "B")		

- Commissioner Shedd moved to accept the streets in Shawnee Ridge SD Ph 4 and 3 year Construction Maintenance Bond #104632498 in the amount of \$49,164 for Milestone Contractors, L.P., seconded by Commissioner Benson; motion carried.

Application to Close a County Road: Raineybrook Homeowner's Association, Inc.

- Commissioner Shedd moved to approve the application from Raineybrook Homeowner's Association, Inc. to close Cormorant Drive from the intersection with Cormorant Court to the cul-de-sac end for a homeowner's picnic from 2:00 P.M. to 9:00 P.M., Saturday June 17, 2006 and a rain date of June 25, 2006, seconded by Commissioner Benson; motion carried.

RESOLUTION 2006-16-CM: Amends Comprehensive Plan for Tippecanoe County to Include the Transportation Plan for 2030: Area Plan Executive Director Sallie Fahey

Resolution 2006-16-CM will appear in its entirety in the Ordinance and Resolution Book in the County Auditor's Office.

Mrs. Fahey requested approval of Resolution 2006-16-CM that will amend the Tippecanoe County Comprehensive Plan to include the Transportation Plan for 2030. As a small Metropolitan Planning Organization, she said the Area Plan Commission (APC) is required by the US Department of Transportation to update its transportation plan at least every five years, have at least a 20 year planning period, and meet additional planning criteria. Mrs. Fahey said this transportation plan addresses the needs of the community through the year 2030. They anticipate the need for approximately \$105 million over the next 20 years which she said is consistent with APC's estimate of what the County will receive during that time.

Attorney Luhman read Resolution 2006-16-CM

- Commissioner Shedd moved to approve Resolution 2006-16-CM, seconded by Commissioner Benson; motion carried.

ORDINANCE 2006-07-CM: Z-2287, Charles E. Payne AW to I2: Charles Payne & Randy Craft, Partners

Ordinance 2006-07-CM will appear in its entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Shedd moved to hear and approve Ordinance 2006-07-CM, seconded by Commissioner Benson.

(quote)

May 18, 2006
Ref. No.: 06-258

Tippecanoe County Commissioners
20 N 3rd Street
Lafayette, IN 47901

CERTIFICATION

RE Z-2287-CHARLES E. PAYNE (AW TO I2):
Petitioner is requesting rezoning of Lot 2, Sam Martin's Subdivision,
Part t and a 0 464 acre tract adjacent to the rear located at 7707 and
7709 E, 300 N, Perry 9 (NE) 23-3. CONTINUED FROM THE APRIL APC MEETING BY
INCONCLUSIVE VOTE.

Dear County Commissioners

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on May 17 2006, the Area Plan Commission of Tippecanoe County voted 4 yes-9 no on the motion to rezone the subject real estate from AW to I2. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be **DENIED** for the property described In the attachment

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their June 5 2006 regular meeting. Petitioners or their representatives must appear to present their case

Sincerely,
/s/Sallie Dell Fahey
Executive Director

(unquote)

Mr. Craft stated that the cabinet shop originally started as a hobby for Mr. Payne and his father. He read the following responses to issues raised by the Area Plan Staff regarding this zoning request:

(quote)

Staff Report -

Misrepresentation of permits - implication of lying when applying for building permits as "personal use", when, in their words, should have been "business use".

Response-

For each permit, including the latest in 2005, the original use was for personal storage needed because the `hobby' grew, and rearrangement of the space eventually became necessary. In the case of the 2005 permit for the pole barn, the original intent was for the storage of excess equipment, a trailer, a boat, etc., but mainly to gain more work space in the original building. After the construction began, and after a small growth in the countertop part of the business, the decision was made to transfer the woodworking part of the business to the new building to facilitate a better dust collection system, a more effective finish room, as well as, gain work space in the original building.

Staff Report -

Mr. Levy reported that there is "a fully functioning cabinet factory in operation", and that "the window fan has a tube connected to the outside of it that directs the discharge from the fan into what appears to be a medium sized horse trailer."

Response -

First, the term "factory" implies production lines, heavy machinery, and numerous employees. We are a very small, "custom" cabinet shop in which each cabinet and countertop are hand made and fabricated. The only `heavy' machinery in the shop are two table saws, not unlike those used in basements and garages by woodworking enthusiasts everywhere. Second, the "tube" is connected to the dust collection system we use to minimize the dust in the shop. It is not in any way connected to the vent fan in the finish room. The sawdust collected in the horse trailer is periodically emptied by local farmers who use it for their horse stalls.

Staff Report-

"While this business may have existed peacefully with the surrounding homes in the past it has obviously grown enough to become a problem for at least one nearby resident".

Response-

Mr. Payne and his father, who lives next door to the property, began this as a woodworking hobby nearly sixteen years ago at this location. In that time, there has not been a single complaint from any neighbor. Both East Tipp Middle School and Hershey Elementary have no problems or concerns with this operation. In fact, the principal at East Tipp Middle School wasn't even aware of the shop's existence. The 'nearby resident' making the 'complaint' failed to sign the letter, leave a return address on the envelope, or, after expressing a desire to attend the zoning meetings, show up at those meetings to speak. In fact, the only speaker against the rezoning was Mr. Levy.

Area Plan Meeting Discussions -

Concern was expressed by a couple of members of the commission about flammable liquids used on the premises. There are three flammable liquids used: Laquer, (sic) Laquer (sic) Thinner, and Denatured Alcohol. The shop goes through about a gallon of laquer (sic) every 6 to 8 weeks, a gallon of laquer (sic) thinner about 6 months, and a gallon of denatured alcohol about every 8 to 10 weeks. All of those liquids are contained in a metal fire proof cabinet.

Concern was expressed about the 'leap' in rezoning from the current AW to the I2 proposed as being required. We agree that this is a leap. However, if Mr. Payne lived on the premises, the shop as it stands right now could be considered a "rural home occupation", and rezoning would not be necessary. Also, and most importantly, under the "Unified Zoning Ordinance" that is used in Tippecanoe County, the "Permitted Use Table" (page 117) shows that the manufacturing of wood kitchen cabinets is a permitted primary use under the General Business zone, as well as, the Central Business zone.

Conclusion -

This business is a very small business. In 2005, three custom built kitchens and one custom entertainment center were built in this shop. The fabrication of several solid surface countertops was completed, however, there are no flammable or toxic residuals or byproducts of these. The main purpose of the new building is to gain elbow room. Certainly, we would like the business to grow as this is our livelihood. But we are keenly aware that very much growth in sales will require a move to a new location, as this location would not allow any further expansion due to the lot size, if nothing else. Mr. Payne will put covenants on this property to prevent any other business to occupy it, should the cabinet/countertop business leave the property. This is permitted under the Unified Zoning Ordinance, 6-4-5, paragraph c. Rezoning to the General Business designation requires certain bufferyard areas, and while the buildings don't meet those requirements and certain variances may be required, both the side yard and rear yard areas abut a backyard and a non-residential lot, respectively.

Our feeling and belief is that we have and will continue to be a good, respectful, and quiet neighbor. We are simply trying to develop a small business that has quietly existed for quite some time, make a living while enjoying our work, and remain in this location in Tippecanoe County.

Thank you for your consideration.

(unquote)

Commissioner Benson asked Area Plan Executive Director Sallie Fahey if GB would be more appropriate than I2. Mrs. Fahey responded that GB zoning would allow more traffic and would impact neighbors more than I2 zoning.

President Knochel commented he thinks I2 zoning is harsh. Mrs. Fahey explained that cabinets and countertops cannot be manufactured in GB zones.

Since Mr. Payne indicated a willingness to add covenants to the property, Commissioner Shedd asked what covenants would do. Attorney Luhman responded that recorded covenants would run with the land and restrict its use, but pointed out they are not in place today. Mrs. Fahey interjected there is no mechanism for the Commissioners to impose covenants. She said, if the zoning is approved, Mr. Payne's next step will be to file with the Board of Zoning Appeals for variances for standards they can't comply with.

Mr. Payne commented that no nearby neighbors or the schools expressed dissatisfaction with their operation. Mr. Craft pointed out that the one letter of complaint was not signed but stated the author lived on 300 N.

Commissioner Shedd asked if the permit for the original building was ever found. Mr. Craft responded it was not but, in his opinion, record of an inspection indicates there was a permit.

President Knochel said he has a problem with the way this case was handled. He reported that Zoning Enforcement Officer Al Levy ordered them to cease operations and told them they could move nothing. As a result, expensive materials were left outside in the weather. He said everyone is aware there is a zoning violation but he pointed out they have been in operation at this location for 16 years. He thinks there is a need to address zoning for small businesses operating in this manner.

Commissioner Benson said she doesn't like allowing a small I2 zone in this area but thinks this business needs to continue. Mrs. Fahey again commented that GB would be worse for the neighbors than I2 if this business is ever relocated.

Attorney Luhman explained the Statute says the Commissioners may adopt or reject a zoning change. If the Commissioners table the request and take no action within 90 days after it was certified by the Area Plan Commission on May 18, 2006 with an unfavorable recommendation, it will be rejected. The petitioner may come back and apply for GB zoning or, if he wishes to reapply for I-2, he must wait one (1) year.

President Knochel observed that the petitioner will have to go through the entire procedure again if he applies for GB. Although he said he doesn't like I2 for this business, he favors the rezone request. He warned Mr. Payne and Mr. Craft they still have work ahead of them since they will need some special exceptions if this is approved today.

Auditor Plantenga recorded the vote:

John Knochel	Yes
Ruth Shedd	No
KD Benson	Yes

- The motion to approve Ordinance 2006-07-CM passed 2 – 1.

ORDINANCE 2006-08-CM: Z-2291, DF Properties, LLP, Robert & Melia Farrell R1 to GB

ORDINANCE 2006-09-CM: Z-2292, DF Properties, LLP, Robert & Melia Farrell R1 to NB

ORDINANCE 2006-10-CM: Z-2293, DF Properties, LLP, Robert & Melia Farrell R1 to II

Ordinances 2006-08-CM, 2006-09-CM, and 2006-10-CM will appear in their entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Shedd moved to hear and approve Ordinance 2006-08-CM, Ordinance 2006-09-CM, and Ordinance 2006-10-CM, seconded by Commissioner Benson.

(quote)

May 18, 2006
Ref No.: 06-280

Tippecanoe County Commissioners
20 N 3rd Street
Lafayette, IN 47801

CERTIFICATION

RE: **Z-2291-DF PROPERTIES, LLP (R1 to GB):**
Petitioner is requesting rezoning of 56.11 acres located at the
southeast corner of CR 350 5 end Concord Road, in Wea 10 (SE) and
11(SW) 22-4

Dear County Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that of a public hearing held on May 17, 2006, the Area Plan Commission of Tippecanoe County voted 13 yes-0 no on the motion to rezone the subject real estate from R1 to GB. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their June 6, 2006 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,
/s/Sallie Dell Fahey
Executive Director

May 18, 2006
Ref. No.: 06-261

Tippecanoe County Commissioners
20 N. 3rd Street
Lafayette, IN 47901

CERTIFICATION

RE: **Z-2292-DF PROPERTIES, LLP (R1 to NB):**
Petitioner is requesting rezoning of 10.76 acres located south east side
of Concord Road, south of CR 350 S, in Wea 10 (SE) 22-4.

Dear County Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on May 17, 2006, the Area Plan Commission of Tippecanoe County voted 13 yes - 0 no on the motion to rezone the subject real estate from R1 to NB. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their June 6, 2006 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,
/s/Sallie Dell Fahey
Executive Director

May 18, 2006
Ref. No.: 06-262

Tippecanoe County Commissioners
20 N. 3rd Street
Lafayette, IN 47901

CERTIFICATION

RE: **Z-2293-DF PROPERTIES, LLP (R1 to I1):** Petitioner is requesting rezoning of 28.51 acres located south and east of the Concord Road/CR 350 S intersection, in Wea 10 (SE) and 11 (SW) 22-4.

Dear County Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on May 17, 2006, the Area Plan Commission of Tippecanoe County voted 12 yes - 1 no on the motion to rezone the subject real estate from R1 to I1. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their June 6, 2006 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,
/s/Sallie Dell Fahey
Executive Director

(unquote)

Representing the petitioner, Attorney Joe Bumbleburg requested a zoning change for approximately 56 acres from R1 to GB, approximately 10 acres from R1 to NB, and approximately 25 acres from R1 to I1 to create the mixed use concept. He said integration provides transition.

President Knochel reported there was 1 negative vote by the Area Plan Commission for the change from R1 to I1 because that acreage abuts R1. Area Plan Executive Director Sallie Fahey interjected she doesn't believe that area will remain R1 forever.

Commissioner Benson noted these properties are located in the Kirkpatrick Ditch impact area which Mr. Bumbleburg acknowledged but said the immediate landowner is a participant in this process. Attorney Luhman said the Drainage Board may impose additional requirements for drainage during their approval process.

Auditor Plantenga recorded the votes:

Ord 2006-08-CM

Ruth Shedd	Yes
KD Benson	Yes
John Knochel	Yes

- The motion to approve Ordinance 2006-08-CM passed 3 – 0.

Ord 2006-09-CM

KD Benson	Yes
John Knochel	Yes
Ruth Shedd	Yes

- The motion to approve Ordinance 2006-09-CM passed 3 – 0.

Ord 2006-10-CM

John Knochel	Yes
Ruth Shedd	Yes
KD Benson	Yes

- The motion to approve Ordinance 2006-10-CM passed 3 – 0.

COMMUNITY CORRECTIONS: Director Pat Scowden

Mr. Scowden requested authorization to investigate the option of hiring a Re-entry Program Director on a contractual basis with an annual salary of approximately \$51,000. This person will come from an agency such as Wabash Valley Hospital and be under the supervision of Mr. Scowden and the courts. They hope to establish the Re-entry Program to help former DOC prisoners adjust to life out of prison through programs that will address their individual needs. Participants will be in the program for as long as two (2) years but the courts have the option of sending them back to the DOC if they re-offend during that time. Expenses will be paid from User Fees, but they will request DOC funding as well.

Attorney Luhman clarified that the Re-entry Program will provide more intensive services over a longer time to prevent participants from re-offending.

- Commissioner Shedd moved to authorize Mr. Scowden to pursue the option of a contractual Director position for the Re-entry Program, seconded by Commissioner Benson.

President Knochel asked how the amount of time spent in the program is determined. Mr. Scowden said it will depend on the felony conviction, but he pointed out that high risk people will not be placed in this program.

- The motion carried.

When reminded, Mr. Scowden announced that Community Corrections was recently elevated to a Level 1 rating because of the programs already in place and they also received increased funding for their DOC Grant.

APPOINTMENTS: Common Wage Board

- Commissioner Shedd moved to appoint Patti O’Callaghan, Betty Michael, and Tom Murtaugh to the Common Wage Board for replacement of Bridge 20 on CR 350 E over East Branch of Wea Creek and Bridge 91 on CR 925 W over Little Pine Creek, seconded by Commissioner Benson; motion carried.

APPLICATIONS: Tippecanoe Villa

- Commissioner Shedd moved to approve the applications of David W. Dungan and William Braswell to the Tippecanoe Villa, seconded by Commissioner Benson; motion carried.

UNFINISHED BUSINESS

Ratification of Poor Relief Appeal Findings and Decision: Elizabeth Dwenger vs Fairfield Township Trustee (5/24/2006)

- Commissioner Shedd moved to ratify the findings and decision to deny the Poor Relief Appeal of Elizabeth Dwenger vs Fairfield Township Trustee heard on May 24, 2006, seconded by Commissioner Benson; motion carried.

REPORTS

Reports from Parks & Recreation, Treasurer, Mail & Duplicating, and Weights & Measures are on file in the Commissioners’ Office for review.

PUBLIC COMMENT

Norm Childress spoke on behalf of the Building Construction Trades Council regarding Commissioners’ appointments to the Common Wage Board. He said today’s appointees have been very open minded in receiving information presented by the Trades Council and adopting wage scales that reflect adoption of apprenticeship programs as the path through unskilled and semi-skilled to skilled craftsman in the community on projects that are tax funded. Although State law only requires Common Wage Boards to adopt unskilled and semi-skilled, he encouraged the Commissioners to continue appointing people with open minds who will consider contractors with apprenticeship programs.

ADJOURNMENT

- Commissioner Shedd moved to adjourn, seconded by Commissioner Benson; motion carried.

**BOARD OF COMMISSIONERS OF
THE COUNTY OF TIPPECANOE**

John L. Knochel, President

Ruth E. Shedd, Vice President

KD Benson, Member

ATTEST:

Robert A. Plantenga, Auditor